



DATE: July 9, 2010

TO: Planning Commission

SUBJECT: GENERAL PLAN UPDATE TRANSFER OF DEVELOPMENT RIGHTS PROGRAM; DISTRICT: ALL

SUMMARY:

Overview

On April 16, 2010, the Planning Commission voted 6-1 (Reiss opposed) to direct staff to prepare a conceptual Transfer of Development Rights program that could be forwarded to the Board of Supervisors with the General Plan Update. They also directed that staff return to the Planning Commission to review the concept. This item is the review of the draft conceptual Transfer of Development Rights program that staff prepared following the April hearing based on two workshops that were held with the public in May and June.

Recommendation(s)

DEPARTMENT OF PLANNING & LAND USE

The Department of Planning and Land Use recommends against inclusion of a Transfer of Development Rights (TDR) program with the General Plan Update. Should the Planning Commission continue to recommend that a Transfer of Development Rights program be included with the General Plan Update, the following outlines a possible approach to that recommendation:

That the Planning Commission:

1. Recommend that staff develop a conceptual TDR program and present it along with the General Plan Update to the Board of Supervisors for consideration in the Fall of 2010.
2. Recommend that the following criteria guide development of the TDR program:
 - a. No modifications to the General Plan Update densities are proposed.
 - b. General Plan Update density reductions will not be voluntary.
 - c. Property owners can choose whether or not, when, and how they wish to sell their transferable rights.
 - d. Purchase of TDRs will not be required to achieve GP Update densities.
 - e. Amend County policies to ensure that purchase of TDRs be considered for

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future GPAs.

- f. Upon approval of the GP Update, direct staff to initiate work with the communities of Campo and Borrego for continued refinement of their community land use plan with particular attention to TDRs. Staff shall also solicit interest from all communities for land use plan refinements and the development of possible receiving sites on an annual basis.
- g. Incorporate, where feasible, the purchase of TDRs into the Purchase of Agricultural Conservation Easement (PACE) program.
- h. Report annually on development under the General Plan Update and the shortfall of any projected units due to underdeveloped projects, land acquisitions, or other relevant actions.
- i. Transferable rights will be determined from an exhibit that assigns a units per acre factor based on a formula that accounts for the difference between existing and proposed General Plan designations and constraints that commonly impact development yield. (See Attachment C)
- j. The County will allow the market to dictate price.
- k. Implementation of the TDR program would be accomplished by zoning ordinance amendments. (See Attachments A and B).

Fiscal Impact

Implementation of a TDR program will likely require additional staffing and funding which could vary depending on the details of the program. Funding could be provided through application fees, transfer fees, and other similar sources so that the County general fund is not impacted. However, high fees could dissuade participation in the program. Therefore, if the program is to be funded by fees it is recommended that administrative costs be minimize through simplification of the process and streamlining.

Business Impact Statement

A TDR program is not expected to have a direct impact on the business community. However, depending on the details of the program, it may have some affects on value of properties; possibility compensation that a property owner may be able to receive for certain property rights, and additional costs that one may incur when developing a property at a higher than normal density.

Advisory Board Statement

There was no advisory committee specific to this issue. Two workshops were held and the two General Plan Update advisory committees (the Steering Committee and the Interest Group) were invited to attend. Notes from those workshops are included in Attachment D.

Involved Parties

The County of San Diego is the project proponent. The General Plan Update will apply to all lands that are under the land use jurisdiction of the County of San Diego. The TDR program is focused primarily at those properties proposed to receive a lower

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density designation under that General Plan Update compared to the existing General Plan.

BACKGROUND:

On April 16, 2010, at the hearing on the General Plan (GP) Update, the Planning Commission directed staff to develop a conceptual Transfer of Development Rights program that would be presented to the Board of Supervisors along with the GP Update. The Planning Commission also recommended a series of criteria to guide development of the concept and directed that staff return to the Planning Commission prior to the Board of Supervisors hearing. This direction was motioned by Commissioner Woods, seconded by Commissioner Brooks and passed 6-1 with Commissioner Reiss voting no. Public workshops were held on Friday, May 7, 2010, and Friday June 18, 2010, to solicit public input on the formulation of a TDR program. A summary of those workshops is included in Attachment D. Based on the feedback obtained from those workshops; DPLU has crafted a working concept of a TDR program. The main points of that program are summarized below and then further explained in the following sections.

Summary of Working Draft TDR Concept

1. No modifications to the GP Update densities are proposed.
2. GP Update density reductions will not be voluntary.
3. Property owners can chose whether or not, when, and how they wish to sell their transferable rights.
4. Purchase of TDRs will not be required to achieve GP Update densities.
5. Amend County policies to ensure that purchase of TDRs be considered for future GPAs.
6. Upon approval of the GP Update, direct staff to initiate work with the communities of Campo and Borrego for continued refinement of their community land use plan with particular attention to TDRs. Staff shall also solicit interest from all communities for land use plan refinements and the development of possible receiving sites on an annual basis.
7. Incorporate, where feasible, the purchase of TDRs into the Purchase of Agricultural Conservation Easement (PACE) program.
8. Report annually on development under the GP Update and the shortfall of any projected units due to underdeveloped projects, land acquisitions, or other relevant actions.
9. Transferable rights will be determined from an exhibit (see Attachment C) that assigns a units per acre factor based on a formula that accounts for the difference between existing and proposed General Plan designations and constraints that commonly impact development yield.
10. The County will allow the market to dictate price.
11. Implementation of the TDR program would be accomplished by two zoning ordinance amendments. Initial drafts are included in Attachments A and B.

1. Reduced Density Reductions

Many attendees of the TDR workshops expressed their concerns over the significant density reductions that the GP Update proposes for certain lands in the unincorporated area. Most point out the densities of one dwelling unit per 40 acres, 80 acre, and 160 acres as being the most concerning. For many properties, these densities are more than a 90 percent reduction from the density in the current General Plan. Some indicate that they will not be able to support such

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density reductions without a TDR program. Others say that they object to these densities all together.

Proposal: No modifications to the General Plan Update densities are proposed.

Rationale: The Planning Commission Recommended map includes no areas designated at one dwelling unit per 160 acres and significantly reduced the amount of area designated one dwelling unit per 80 acres from the original staff recommendation. The densities of one dwelling unit per 40 acres and 80 acres have been included in the GP Update since early in the process and are key to its the mapping framework. Additionally, the Board did not direct staff to evaluate a mapping scenario that excluded these densities so such a concept is not considered in the draft Environmental Impact Report (EIR). Such a recommendation would require substantial modification to the GP Update document and EIR.

2. Voluntary Density Reductions

Some commenters at the TDR workshops and on the GP Update suggest that the currently proposed GP Update density reductions be voluntary. Voluntary reductions would allow property owners to decide if they want to retain their densities under the current General Plan or transfer their development rights and reduce their allowed density. With voluntary TDR programs, incentives are typically provided to compel the transfers.

Proposal: GP Update density reductions will not be voluntary.

Rationale: The majority of voluntary TDR programs implemented across the nation have been unsuccessful. A voluntary program would not achieve the objectives of the GP Update and it would require significant public investment in incentives to produce any meaningful results. A voluntary TDR program was also not evaluated in the GP Update draft EIR.

Note: The Save Our Rural Economy (S.O.R.E.) proposal consists of both reduced density reductions and voluntary density reductions.

3. Voluntary Transfers from Sending Sites

Sending sites are those sites that received reduced density designations as a result of the GP Update. The TDR program would allocate sending sites a certain number of transferable development rights based on the reduction in density resulting from the GP Update. The owner of the sending site would have the right to sell the transferable development rights to another person or entity.

Proposal: Property owners can chose whether or not, when, and how they wish to sell their transferable rights.

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Rationale: While all efforts will be made to streamline the transfer process, transferring development rights will require some effort and up front costs. Therefore, the owner of those rights can elect if they want to transfer them.

4. Requiring Purchase of TDRs to Realize GP Update Densities

Staff's original recommendation was that properties that received increases in density as a result of the GP Update should be required to purchase TDRs to realize those increased densities. This strategy would create an immediate market for the TDRs and address the perceived inequity that is based on certain properties receiving greater densities while others receive less. While some were supportive of this concept, others objected citing concerns over housing affordability, the ability to achieve GP Update densities and its objectives, Housing Element compliance, and the already high costs of developing land.

Proposal: Purchase of TDRs will not be required to achieve GP Update densities.

Rationale: In general, it seemed that most of the stakeholders that requested a TDR program either objected to this concept or did not feel strongly about it. Therefore, there was little reason to retain this as an element of the program if it was strongly supported.

5. Incorporating the Purchase of TDRs into Future GPAs

Future privately-initiated General Plan Amendments (GPAs) could include a purchase of TDRs. Depending on the number of GPAs, this could be a significant market for TDRs. Details on purchase requirements could be provided in County policy or determined on a case-by-case basis at the time the Plan Amendment Authorization (PAA) or GPA is proposed.

Proposal: Amend County policies to ensure that purchase of TDRs be considered for future GPAs.

Rationale: There was general consensus that the purchase of TDRs should be considered for future GPAs that increase densities. However, there was also some concern that when a GPA is privately pursued to increase densities that a significant investment is already required by the applicant just to process the application. Additionally, other benefits such as infrastructure and mitigation fees may be provided by the GPA at a substantial cost. Therefore, the norm should be to include the purchase of TDRs with GPAs that increase density but there are a number of circumstances that may be grounds for an exception. It was suggested that the PAA process be used to specify up front what level of TDR is expected of a GPA.

6. County-led Development of Receiving Sites

The County could plan for receiving sites of TDRs, creating another market for TDRs and facilitating their use. Adoption of receiving sites is typically accomplished by GPA with corresponding environmental review. As a result, individual applicants do not need to process their own GPAs to achieve the higher densities allowed for in the receiving site.

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Proposal: Upon approval of the GP Update, direct staff to initiate work with the communities of Campo and Borrego for continued refinement of their community land use plan with particular attention to TDRs. Staff shall also solicit interest from all communities for land use plan refinements and the development of possible receiving sites on an annual basis.

Rationale: Continued maintenance, refinements, and enhancements to the General Plan Update are anticipated. Several communities have already expressed the desire for further planning work in their communities after adoption of the GP Update. When areas are identified for additional development, they may be appropriate as receiving sites for TDRs.

7. County Purchases of TDRs

The County could also purchase TDRs from property owners and either retire the TDRs or bank them for future application with County-initiated actions. The main difficulty with this concept is the source of funding. The use of general fund monies would divert general tax payer funds from other programs provided by the County. A surcharge on permits or a similar fee would be opposed by the development community and contrary to the County's efforts to reduce costs.

Proposal: Incorporate, where feasible, the purchase of TDRs into the Purchase of Agricultural Conservation Easement (PACE) program.

Rationale: Due to the current economic climate, it is unlikely that the County would fund the direct purchase of TDRs. This could be revisited in the future when economic conditions improve. In the meantime, TDR purchase could be incorporated into other programs. County purchases of land for open space will likely include a purchase of any TDRs that run with the land since they should be included in the properties appraised value. The PACE program could also include TDR purchases when conservations easements are purchased over agricultural lands if the TDR is included in the appraised value used as the bases of the purchase. Funding for PACE has not yet been determined but will likely include a combination of federal and State funds, and possibly mitigation funds and County contributions.

8. Monitoring GP Update Housing Production

Interest has been expressed in monitoring performance of the GP Update as it is implemented to provide feedback for future decision making and planning efforts that may produce more receiving sites. Numerous aspects of the GP Update implementation are anticipated to be tracked and reported on an annual basis. This framework could serve as a basis for the suggested housing information.

Proposal: Report annually on development under the GP Update and the shortfall of any projected units due to underdeveloped projects, land acquisitions, or other relevant actions.

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Rationale: This data will allow the County and interested parties to monitor the growth of the unincorporated area in comparison to projections developed by the County during the GP Update and with SANDAG estimates.

9. Transferable Rights Allocation to Downzoned Properties

This component of the program refers to how transferable development rights of a particular property are calculated and assigned to a given property. Numerous stakeholders commented that any allocation of rights should take into account constraints since most properties would not be able to fully realize their current density.

Proposal: Transferable rights will be determined from an exhibit (refer to Attachment C) that assigns a units-per-acre factor based on a formula that accounts for the difference between existing and proposed General Plan designations and constraints that commonly impact development yield.

Rationale: Using a standardized approach to allocate development rights will avoid the work effort and controversy associated with assigning rights based on individual evaluation. Disagreements will likely be raised from some property owners that believe or know that their property could be developed at a higher density. However, disagreements are anticipated with whichever approach to allocations is applied. This approach maximizes consistency and minimizes effort so processing costs are kept low. Disagreements could be resolved through an appeals process.

10. Pricing of Transferable Rights

The open market is the most common means to dictate price. Buyers and sellers could negotiate directly, but the County could facilitate connections by hosting a “marketplace” website or similar forum. If necessary, price floors or ceilings could be established.

Proposal: The County will allow the market to dictate price.

Rationale: Most stakeholders seem to prefer that the County not be involved in the sale/purchase of transferable rights. Similarly, there is limited benefit for the County to be involved unless there is a proven need for external controls.

11. TDR Implementation

Implementation of the TDR program is currently proposed to be implemented by two zoning ordinance amendments. One amendment would create a new Special Area Designator for use in designating those particular properties that are part of a TDR program. The second amendment would change the zoning of the parcels that were downzoned with the GP Update to assign them with the new TDR Special Area Designator and to provide the details of how this TDR program would be implemented. Drafts of these two amendments are included in Attachments A and B.

PROJECT ISSUES:

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Numerous issues, concerns, and opposing views and positions have been received on the TDR program. Written comments received since the April 16 Planning Commission hearing and summaries of the two workshops are provided in Attachment D.

WAIVERS AND EXCEPTIONS:

N/A

ENVIRONMENTAL STATUS:

The TDR program would be included as part of the GP Update and addressed with its Environmental Impact Report. No additional environmental review is necessitated for the conceptual TDR program because it does not specifically provide for growth beyond the GP Update. As drafted, the conceptual TDR program is focused on identifying the sending sites and quantifying the number of credits available for transfer. Receiving sites to accept densities in excess of what is in the GP Update would need to be developed in the future and will require separate environmental review.

PREVIOUS ACTIONS:

On April 16, 2010, the Planning Commission directed staff to develop a conceptual Transfer of Development Rights (TDR) program that would be presented to the Board of Supervisors along with the General Plan Update. The Planning Commission also recommended a series of criteria to guide development of the concept and directed that staff return to the Planning Commission prior to the Board of Supervisors hearing.

ACTIVITIES UNDERTAKEN WITHOUT APPROPRIATE PERMITS:

N/A

PUBLIC INPUT:

Written comments received since the April 16 Planning Commission hearing and summaries of the two workshops are provided in Attachment D.

DEPARTMENT REASONS FOR RECOMMENDATION:

The Department of Planning and Land Use recommends against inclusion of a Transfer of Development Rights program with the General Plan Update because it is not required by law, undermines the legal authority of the County of San Diego, suggests to property owners that they are entitled to compensation for certain rights, and potentially opens the County to additional legal and fiscal liability. However, the Planning Commission recommended development of the program and therefore the Department has responded to this request with a program that it believes best responds to the various commenters, fits within the framework of the General Plan Update, and minimizes costs to the County and parties involved with transfers.

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cc: All Community Planning/Sponsor Groups
Interested Parties (via email)

ATTACHMENTS:

Attachment A – Draft Special Area Designator Ordinance

Attachment B – Draft TDR Ordinance

Attachment C – TDR Calculation Exhibits

Attachment D – Public Comment and Summaries of May 7 and June 18, 2010 TDR Workshops

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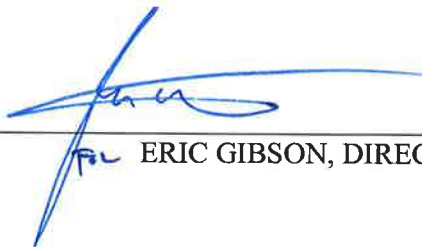
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AUTHORIZED REPRESENTATIVE:



ERIC GIBSON, DIRECTOR

Attachment A

Draft Special Area Designator Ordinance

WORKING DRAFT

ORDINANCE NO. _____ (NEW SERIES)

AN ORDINANCE AMENDING THE ZONING ORDINANCE CREATING A TRANSFER OF DEVELOPMENT RIGHTS SPECIAL AREA DESIGNATOR

The Board of Supervisors of the County of San Diego ordains as follows:

Section 1. The Board of Supervisors declares that the intent of this ordinance is to update the Zoning Ordinance by making the following amendments to create a transfer of development rights special area designator. The Board finds that these amendments are reasonable and necessary for the public health, safety, and welfare and are consistent with the General Plan.

Section 2. Section 5025 of the San Diego County Zoning Ordinance is amended to read as follows:

5025 LISTINGS OF DESIGNATORS.
The following shall be used as appropriate.

<u>Designator</u>	<u>Special Area Designator</u>	<u>(See Section)</u>
A	Agricultural Preserve	5100-5110
B	Community Design Review Area	5750-5799
D	Design Review	5900-5910
E	Fault Displacement	5400-5406
F	Flood Plain	5500-5522
G	Sensitive Resource	5300-5349
H	Historic/Archaeological Landmark or District	5700-5747
J	Specific Historic District	5749
P	Planned Development	5800-5806
R	Coastal Resource Protection Area	5950-5957
S	Scenic	5200-5212
T	Unsewered Area	5960-5964
V	Vernal Pool Area	5850-5856

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W	Flood Channel	5450-5472
X	Transfer of Development Rights	XXXX-XXXX

Section 3. Sections 5XXX through 5XXX, inclusive, are added to the San Diego County Zoning Ordinance to read as follows:

TRANSFER OF DEVELOPMENT RIGHTS AREA REGULATIONS

5XXX TITLE AND PURPOSE.

The provisions of Sections 5XXX through 5XXX, inclusive, shall be known as the Transfer of Development Rights or TDR Area Regulations. The purpose of these regulations is to provide a framework within the Zoning Ordinance to accommodate the transfer of development rights. The TDR Area Regulations are not intended as the sole mechanism for implementation of development rights transfers in the County of San Diego. Other options exist for implementation of TDR programs and these regulations provide one possible avenue within the framework of the Zoning Ordinance.

Possible application of the TDR Area Regulations include, but are not limited to:

- (a) preserve open space, scenic views, critical and sensitive areas, and natural hazard areas;
- (b) conserve agriculture and forestry uses of land;
- (c) protect lands and structures of aesthetic, architectural, and historic significance;
- (d) retain open areas in which healthful outdoor recreation can occur; and
- (e) implement the San Diego County General Plan.

5XXX APPLICATION OF TRANSFER OF DEVELOPMENT RIGHTS DESIGNATOR

The Transfer of Development Rights Area designator shall be applied in accordance with the stated purpose of the TDR regulations at Section 5XXX. The ordinance applying said designator to particular property shall contain a statement of the objective(s) sought to be achieved, a description of the rights that the designator provides to affected properties, and the process for transferring or receiving such rights. The Transfer of Development Rights Area designator may be used for properties that may sell certain development rights (referred to as sending sites) and those that may receive development rights (referred to as receiving sites). The specific allowances for a particular property shall be specified by the ordinance applying the designator.

5XXX LIMITATIONS ON TRANSFERS OF DEVELOPMENT RIGHTS

Any transfer of development rights pursuant to this ordinance authorizes density transfers consistent with the general plan. The general plan maximum densities shall not be exceeded.

Attachment B

Draft TDR Ordinance

WORKING DRAFT

ORDINANCE NO. _____ (NEW SERIES)

AN ORDINANCE CHANGING THE ZONING CLASSIFICATION OF CERTAIN PROPERTY AND IMPLEMENTING A TRANSFER OF DEVELOPMENT RIGHTS ASSOCIATED WITH THE GENERAL PLAN UPDATE

The Board of Supervisors of the County of San Diego ordains as follows:

Section 1. The Board of Supervisors declares that the intent of this ordinance is to amend the Zoning Ordinance in support of a transfer of development rights program associated with the General Plan Update. This ordinance is specifically intended to isolate the development rights removed as a result of the General Plan Update from a property and make those rights available for transfer. The Board finds that these amendments are reasonable and necessary for the public health, safety, and welfare and are consistent with the General Plan.

Section 2. The zoning classification of certain real property delineated on the Map identified as Document No. _____, on file with the Clerk of the Board of Supervisors of the County of San Diego, is hereby changed to add an X designator to the Special Area Regulations section.

Section 3. The following transfer of development rights program is hereby adopted for the property affected by this ordinance.

A. OBJECTIVES

(1) The purpose of these provisions is to:

- (a) preserve open space, scenic views, critical and sensitive areas, and natural hazard areas;
- (b) conserve agriculture and forestry uses of land;
- (c) protect lands and structures of aesthetic, architectural, and historic significance;
- (d) retain open areas in which healthful outdoor recreation can occur;
- (e) implement the San Diego County General Plan Update;
- (f) retain, in transferable form, those development rights removed from a property as result of the General Plan Update with consideration of regulatory and physical constraints; and
- (g) provide a mechanism whereby those development rights may be transferred to other properties.

B. DESIGNATION OF SENDING SITES

(1) Properties receiving the TDR designator with this ordinance are designated as sending sites.

(2) Each sending site established by this ordinance shall have the right to sever the rights to develop that were reduced as a result of the General Plan Update from the parcel in a sending site and to sell those rights to a transferee consistent with the objectives of this program in Section A.

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(3) The transferable rights are derived from the development constraints in place at the time the General Plan Update was adopted compared to the General Plan Update allowed densities. The number of transferable rights available to a property are calculated based on predetermined conversion factors mapped on the TDR Exhibit dated XXXXXX, on file with the Department of Planning and Land Use.

These conversion factors account for density and minimum lot size constraints in place at the time the General Plan Update was adopted such as:

- (a) the General Plan regional category and land use designations;
- (b) the Zoning Ordinance Maximum Density and Minimum Lot Size designations; and
- (c) the Groundwater Ordinance Residential Density Controls.

These conversion factors also account for other constraints addressed by regulations at the time the General Plan Update was adopted with available mapping data such as:

- (a) steep slopes;
- (b) sensitive biological habitat and wetlands;
- (c) emergency services travel time standards;
- (d) floodways and flood plains; and
- (e) dead end road length standards.

B. DESIGNATION OF RECEIVING SITES

(1) The establishment of receiving sites should be considered for all post-General Plan Update general plan and zoning amendments that proposed to increase densities.

(2) Receiving sites established shall be consistent with the general plan and community plan.

C. RIGHT TO TRANSFER DEVELOPMENT RIGHTS

(1) Each legal lot established as a sending site by this ordinance shall have the right to sever the rights to develop that were reduced as a result of the General Plan Update from the parcel in a sending site and to sell those rights to a transferee consistent with the objectives of this program in Section A.

(2) The transferee may retire the rights, resell them, or apply them to property in an eligible receiving site in order to obtain approval for development at a density or intensity of use greater than would otherwise be allowed on the land, up to the maximum density indicated in the general plan.

(3) Any transfer of development rights pursuant to this ordinance authorizes only an increase in maximum density consistent with the general plan and shall not alter or waive the development standards of the receiving site. Nor shall it allow a use otherwise prohibited in a receiving district.

D. DETERMINATION OF TRANSFERABLE DEVELOPMENT RIGHTS

(1) The Director shall be responsible for:

- (a) determining, upon application by a property owner, the development rights that may be transferred from a sending site and issuing a transfer of development rights certificate upon application by the property owner.

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- (b) maintaining permanent records of all certificates issued, deed restrictions and covenants recorded, and development rights retired or otherwise extinguished, and transferred to specific properties; and
 - (c) making available forms on which to apply for a transfer of development rights certificate.
- (2) An application for a transfer of development rights certificate shall contain:
- (a) a certificate of title for the sending site prepared by an attorney licensed to practice law in the state of California;
 - (b) a plat of the proposed sending parcel and a legal description of the sending parcel prepared by a registered civil engineer authorized to practice land surveying or licensed land surveyor;
 - (c) names, addresses, telephone numbers and signatures of all owners;
 - (d) copy of the current owner's recorded deed;
 - (c) applicable fees; and
 - (d) such additional information required by the Director as necessary to determine the number of development rights that qualify for transfer and prepare the certificate.
- (3) A transfer of development rights certificate shall identify:
- (a) the property owner;
 - (b) a legal description of the sending site on which the calculation of development rights is based;
 - (c) a statement of the number of development rights (quantified in dwelling units) eligible for transfer;
 - (d) the date of issuance;
 - (e) the signature of the Director or designee; and
 - (f) a serial number assigned by the Director.
- (4) No transfer of development rights under this ordinance shall be recognized by the County of San Diego as valid unless the instrument of original transfer contains the Director's certification.
- (5) Appeal. The issuance of a transfer of development rights certificate and the number of development rights eligible for transfer contained in the certificate may be appealed pursuant to the Administrative Appeal Procedures beginning at Section 7200 of the Zoning Ordinance.

E. INSTRUMENTS OF TRANSFER

- (1) An instrument of transfer shall conform to the requirements of this section. An instrument of transfer, other than an instrument of original transfer, need not contain a legal description or plat of the sending parcel.
- (2) Any instrument of transfer shall contain:
- (a) the names of the transferor and the transferee;
 - (b) a certificate of title for the rights to be transferred prepared by an attorney licensed to practice law in the state of California;

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- (c) a covenant the transferor grants and assigns to the transferee and the transferee's heirs, assigns, and successors, and assigns a specific number of development rights from the sending site to the receiving site; and
 - (d) a covenant by which the transferor acknowledges that he has no further use or right of use with respect to the development rights being transferred.
- (3) An instrument of original transfer is required when a development right is initially separated from a sending site. It shall contain the information set forth in paragraph (2) above and the following information:
- (a) a legal description and plat of the sending parcel prepared by a licensed surveyor named in the instrument;
 - (b) the transfer of development rights certificate described in Section D above; and
 - (c) a covenant that all provisions of the instrument of original transfer shall run with and bind the sending site and may be enforced by the County of San Diego.
- (4) If the instrument is not an instrument of original transfer, it shall include information set forth in paragraph (2) above and the following information:
- (a) a statement that the transfer is an intermediate transfer of rights derived from a sending site described in an instrument of original transfer identified by its date, names of the original transferor and transferee, and the book and the page where it is recorded in the County of San Diego.
 - (b) copies and a listing of all previous intermediate instruments of transfer identified by its date, names of the original transferor and transferee, and the book and the page where it is recorded in the County of San Diego.
- (5) County Counsel shall review and approve as to the form and legal sufficiency of the following instruments in order to affect a transfer of development rights to a receiving site:
- (a) An instrument of original transfer;
 - (b) An instrument of transfer to the owner of the receiving parcel; and
 - (c) Instrument(s) of transfer between any intervening transferees.

Upon such approval, the Director shall notify the transferor or his or her agent, record the instruments with the County Recorder, and provide a copy to the County Assessor. Such instruments shall be recorded prior to release of applicable development approvals for the receiving site.

F. APPLICATION OF DEVELOPMENT RIGHTS TO A RECEIVING SITE

- (1) This section provides a conceptual process for application of transferred development rights to a receiving site. The specific process should be specified for a receiving site when that site is established.
- (2) A person who wants to use development rights on a property in a receiving site may submit an application for the use of such rights on a receiving parcel. The application could be part of an application for a development permit. In addition to any other information required for the development permit, the application should be accompanied by:
- (a) an affidavit of intent to transfer development rights to the property; and
 - (b) either of the following:

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1. a certified copy of a recorded instrument of the original transfer of the development rights proposed to be used and any intermediate instruments of transfer through which the applicant became a transferee of those rights; or
 2. a signed written agreement between the applicant and a proposed original transferor (accompanied by an application for a transfer of development rights certificate from the transferor) in which the proposed transferor agrees to execute an instrument of such rights on the proposed receiving parcel when the use of those rights, as determined by the issuance of a development permit, is finally approved.
- (2) In the case of a privately initiated general plan amendment that include transfers of development rights to achieve a density in excess of the General Plan, the applied development rights should be extinguished at the time of final approval of the amendment.
- (3) The County should also pursue general plan amendments that establish receiving area where future subdivisions and development have the ability to take advantage of transferable development rights.
- (3) Where receiving areas are established. the County of San Diego may grant preliminary subdivision approval of a proposed development incorporating additional development rights upon proof of ownership of development rights and covenants on the sending site being presented to the County of San Diego as a condition precedent to final subdivision approval.
- (3) No general plan amendment or final plat of subdivision, including minor subdivisions, should be approved and no development permits should be issued for development involving the use of development rights unless the applicant has demonstrated that:
- (a) the applicant will be the bona fide owner of all transferred development rights that will be used for the construction of additional dwellings or the creation of additional lots;
 - (b) a deed of transfer for each transferred development right has been recorded in the chain of title of the sending site and such instrument restricts the use of the parcel in accordance with this ordinance; and
 - (c) the development rights proposed for the subdivision or development have not been previously used. The applicant shall submit proof in the form of a current title search prepared by an attorney licensed to practice law in the state of California.

Section 4. Expiration. Unless extended by ordinance approved by the Board of Supervisors, this ordinance and the resulting special area designators and transferable development rights shall expire on June 30, 2030.

Attachment C

TDR Calculation Exhibits

Attachment C: Transferable Rights Allocation to Downzoned Properties

In order to implement the Transfer of Development Rights program, it is necessary to establish a consistent method for estimating how many units could have realistically been applied to any property under the existing General Plan and Ordinances. Once this number is determined, it should be modified based on site constraints. Finally, the revised number should be compared to how many units would be allowed under the proposed General Plan.

The Department of Planning and Land Use methodology used to estimate the existing “Effective Density” for properties downzoned included two steps as follows. The Constraints Exhibits are available at www.sdcountry.ca.gov/dplu/gpupdate/tdr.html.

1. The “Ordinance Density” was determined by taking the most restrictive of each property’s General Plan density, Zoning density and density determined by the Groundwater Ordinance and Groundwater Limitations Map.
2. Constraints were then applied to each Assessors Parcel Number (APN), and a Potential Yield was determined for each APN. *It is important to note that an APN is not the same as having a Legal Lot (see Zoning Counter Form 88), proof of which would be required prior to transfer of units.* The following constraints were applied where a certain percentage of density reduction on the area was assumed where the constraint occurs. In the case of multiple constraints, the most restrictive constraint was applied rather than adding them together.
 - a. Steep Slopes – Areas with greater than 25% slope were assigned a 50% density decrease to reflect the average avoidance requirement applied to project sites with steep slopes
 - b. Tier 1 Habitat – Identified Tier 1 Habitat areas were assigned a 75% density decrease because these types of resources typically require a 3:1 mitigation ratio
 - c. Wetlands / Floodways – Resource Protection Ordinance defined Wetlands and Floodways were given a 100% constraint (zero density) since residential subdivisions are required to avoid these features
 - d. Fire Travel Time Greater than 20 Minutes – Areas that have a greater than 20-minute travel time from a recognized and fully staffed fire station were given a 100% constraint (zero density) to reflect the inability of these areas to subdivide under the existing General Plan (Public Facilities Element)
 - e. Distance from Publicly Maintained Road – Areas more than one-quarter mile in linear distance from a publicly maintained road, highway or freeway were given a 50% density decrease based on existing General Plan and

Fire Code restrictions (this constraint was applied to one version of the exhibit, with another version showing calculations without this constraint)

Once this methodology was used to estimate the units that a property could achieve under the existing General Plan, a calculation based on the General Plan Update Planning Commission Recommendation Map (April 2010) was completed to show the difference in number of units available for development. These constraints exhibits are available at www.sdcountry.ca.gov/dplu/gpupdate/tdr.html. Total units potentially available for transfer using the two alternate methods are shown in Table C-1.

Additional items can be considered into the methodology for determining effective densities and units lost. Two particular items that should be considered in the future is existing multi-family developments that received moderate density changes to reflect actual development, such as in Spring Valley, by applying a constraint to areas shown as being built in San Diego's Association of Governments Existing Land Use Layer. Another pending item is to as well as to better reflect the existing Forest Conservation Initiative requirements into the modeling.

**Table C-1: Draft Transfer of Development Rights
Working Concept (Units Available)**

Community	Units (4 Constraints)	Units (5 Constraints)
Alpine	497	430
Bonsall	965	870
Central Mountain	74	71
• Cuyamaca	-	-
• Descanso	6	6
• Pine Valley	64	62
• Unrepresented	4	3
County Islands	-	-
Crest-Dehesa	743	708
Desert	7,133	6,228
• Borrego	6,735	6,014
• Unrepresented	398	214
Fallbrook	602	576
Jamul-Dulzura	892	675
Julian	410	371
Lakeside	1,268	1,146
Mountain Empire	4,304	3,001
• Boulevard	1,280	896
• Jacumba	416	309
• Lake Morena/Campo	1,815	1,205
• Potrero	535	424
• Tecate	192	144
• Unrepresented	66	23
North County Metro	1,459	1,225
• Hidden Meadows	374	348
• Twin Oaks	492	426
• Unrepresented	593	51
North Mountain	1,649	1,154
• Palomar Mountain	51	31
• Unrepresented	1,598	1,123
Otay	3	0
Pala-Pauma	1,881	1,599
Pendelton De Luz	920	717
Rainbow	549	484
Ramona	1,499	1,285
San Dieguito	258	204
Spring Valley	553	553
Sweet Water	165	164
Valle De Oro	84	84
Valley Center	1,733	1,376
Unincorporated County	27,641	22,921

Attachment D

**Public Comment and Summaries of May
7 and June 18, 2010 TDR Workshops**

GENERAL PLAN UPDATE

TRANSFER OF DEVELOPMENT RIGHTS MEETING

Combined meeting of the Public, Steering Committee and Interest Group

May 7, 2010

Meeting Commenced at 10:00 A.M.

I. General Comment

Mr. Henry Palmer stated that the residents of the Twin Oak sponsor area were concerned with the proposed Zoning Consistency Review changes by staff and specifically how it relates to agricultural operations in the area. He also recommended that staff look into creating an interim period after the General Plan Update is adopted to allow for property owners one final chance to develop under the existing General Plan.

Mr. Victor Esparza stated that he believed the General Plan Update Planning Commission hearings on November 19th 2010 were not appropriately notified, and therefore were in violation of the Brown Act.

Mr. Ron Richardson stated that the short notice he received regarding a stakeholder meeting for Ocotillo Wells, which discussed the proposed property changes was not adequate, and property owners should have been given more appropriate notice.

II. Summary of TDR Program.

Mr. Devon Muto began the workshop with introductions and provided a brief overview of the purpose of a TDR program. He went over the criteria included in the May 2010 Equity Mechanism Fact sheet.

III. Issues and Concerns over a TDR Program Raised

(In no particular order, inclusion in this list does not indicate a consensus on an issue)

Mandatory vs. Voluntary

- Audience members asked what does a Mandatory program entail, in the criteria for the Transfer of Development Rights Program?
 - i. Staff explained that a mandatory program would require participation by limiting the on-site development to the General Plan density, and using the difference between to General Plan Update and existing General Plan with some form of formula for transferring units.
- It was suggested that if the main issue with the mandatory provision in the program is the downzones in rural areas, then the project should be revised to have less significant downzones.

- i. DPLU responded that there are a few reasons the project would not be revised to have less significant downzones, including that the EIR did not cover the analysis, there are many existing constraints to development in the areas down zoned and that many of the rural areas can not accommodate growth.

Constraints to units under the existing General Plan

- It was asked if there should be compensation for units that would not have been developed because of unavoidable constraints such as slope and sensitive habitat.
- One suggestion was that calculation for the transfer of units from the sending sites should include all constraints to eliminate of “phantom units”.
- A participant suggested the TDR program should use the Groundwater ordinance or basic constraints to determine the specific unit yield for a property

Establishing Receiving sites

- The position was raised that a TDR program will only add an additional cost to developers, making some projects economically infeasible and in turn drive away future development.
- It was asked what the incentive would be to use the TDR program instead of existing regulations in place such as a GPA or rezone?
- A suggestion was that the TDR program be a viable alternative to the GPA process and should be less risky to the applicant.
- An audience member stated that receiving sites would have to be coordinated with the Community Groups to not could potentially change the community character of the area by adding additional units. Adding that community plans could be revised to include language on TDR programs as another specific form of control.
- It was inquired if a grandfathering provision could be included for General Plan amendments already in process.
- General questions were raised over who should be required to pay, if someone receives a significant increase or decrease in density with the General Plan Update, future General Plan Amendments, or other funding sources?

General Items

- It was suggested that the County of San Diego would need to annually review the TDR program to determine which areas can accept additional units.
- A participant asked where the funding come from to pay for the purchase of development rights under a PDR program.
- One audience member raised the issue that a TDR program may not work for a jurisdiction as large as the County of San Diego.
- It was asked if units lost from conservation purchases or other public projects could be included in a bank that can be used in future projects.
- Some participants questioned if projects with significant infrastructure investments should be treated the same way as other projects.

Attachment D

- A question was raised on how reductions in Commercial and Industrial land uses should be considered.

IV. Next Steps

Staff will review comments received during the May 7th TDR workshop and return to the Planning Commission later this year. Mr. Muto concluded the workshop, and stated that if time permitted staff would attempt holding another TDR workshop if possible.

GENERAL PLAN UPDATE

TRANSFER OF DEVELOPMENT RIGHTS MEETING

Combined meeting of the Public, Steering Committee and Interest Group

June 18, 2010

Meeting Commenced at 10:00 A.M.

I. Summary of TDR Program.

Mr. Devon Muto began the workshop with introductions and provided a brief overview of the purpose of a TDR program.

II. Issues and Concerns over a TDR Program Raised

(In no particular order, inclusion in this list does not indicate a consensus on an issue)

Process for Receiving Sites

- An audience member stated that he thought a TDR needed to be an alternative to the rezone/GPA process to be economically viable with the addition of an extra cost. It was suggested a certain range should be allowed without a General Plan amendment, such as 20%.
 - The response to this idea was that any increase in density over the General Plan Update densities would need to be studied in an Environmental Impact Report. It was noted that the density bonus ordinance was a requirement under state law, and is a different situation.
- It was discussed that a private General Plan Amendment that had a transfer of development rights aspect could have an advantage, as it brings a more positive aspect, which is typically looked at as a General Plan Amendment.
- The point was raised that there was the potential for County initiated General Plan Amendments that could require a Transfer of Development rights for development, and would not require an applicant to process their own amendment. Two areas that are targeted based on community input are Borrego Springs and Campo / Lake Morena.
- It was raised that the concern now is that there is a shortage of ways to retire or use the units, and that the County of San Diego could make it a priority to use funds to retire units as the economy rebounds.
- The idea was raised that if a General Plan Amendment would be required to purchase transfer units that it should be decided during the Plan Amendment Authorization Process.

Growth over General Plan Update densities

- Some participants expressed concern that the unit numbers that were estimated from the sending sites were high, and would result in additional development above the units allowed by General Plan Update Land Use Map by encouraging General Plan Amendments.
- It was also raised that setting the precedent that no loss of units should be allowed could potentially pose serious repercussions.
- It was discussed that the program would create a market for units, something that had not been done before in this county, and that there was no certainty on how many of these units would be purchased or constructed.
- A participant stated that communities need protection if the program allows by-right density increases, including protection from Semi-Rural areas being changed into Village Areas.

Sending Sites

- Staff explained the constraints and how they were applied to come up with the amount of units that could potentially be transferred.
- An audience member raised that one time it was suggested that only downzones greater than 50% should be included. Staff responded that due to how properties are assigned designations, approximately 90% of the properties that received a decrease in density were decreased by 50% or greater.
- It was asked if groundwater was included in the analysis and staff responded that yes, the groundwater ordinance was one of the first inputs.

Effectiveness of Transfer of Development Rights Program

- A participant stated that they do not know why the TDR program is being developed if the current draft is not supported by many stakeholders, and is not the program that was recommended initially by stakeholders.
- Some participants stated they did not agree with the General Plan Update Land Use Map reductions and voiced that they think there are sufficient controls on development under the existing regulations.
 - Staff responded that it may be the case, but that if the General Plan Update is adopted there will be different ways of processing projects, such as through the Conservation Subdivision Program, and that development will have a comprehensive Environmental Impact Report to reference and use.
- It was suggested that the General Plan Update set up the framework for a TDR program and that they take the time to set up a more effective program, however it was also noted that the County of San Diego would have less incentive to set up a program following adoption of the General Plan Update and many participants did not agree that a future program would be adequate.
- One comment was that the program will work in conjunction with other equity programs, such as the Conservation Subdivision Program, and the PACE Program. It also acknowledged that this is not the same as a conventional Transfer of Development Rights program, which has set sending and receiving sites.

General Comments

- One member of the public talked about the County of San Diego's need to provide housing, and stated they have concerns with the population modeling. Staff responded that they have discussed the modeling and do not agree with the concerns, that SANDAG and the County have similar modeling approaches and have comparable results.
- It was asked what impact this General Plan Update would have on property taxes, stating that the assessor looks at comparables, and other factors, including density, when property values are appealed.
 - Staff responded that they have talked with the Assessor's Office, and do not think that there will be a detrimental effect to property tax revenue. One reason for this is how property taxes are calculated and that under Proposition 13 regulations, many properties are assessed at a value lower than the market value of the property.

III. General Comment

It was asked if there were any non-agenda item public comments, there were none.

IV. Next Steps

The draft TDR proposal will be included as a separate agenda item to the Planning Commission on July 9, 2010.

June 16, 2010

VIA FACSIMILE AND ELECTRONIC MAIL

Devon Muto
Dept of Planning and Land Use
5201 Ruffin Rd, Suite B
San Diego, CA 92123

RE: Draft Transfer of Development Rights Program (June 11, 2010)

Dear Mr. Muto:

The Endangered Habitats League (EHL) appreciates the opportunity to comment on the working concept and requests that this letter be made available at the June 18, 2010 workshop. The concept posits post-Update GPAs as the vehicle for a TDR program. EHL strongly *opposes* such a design. For your reference, we are a member of the Interest Group and a long term stakeholder in County planning efforts.

EHL concurs with DPLU's underlying position against implementing a TDR program at this time. As the analysis in the document makes clear, the window of opportunity to integrate a TDR program into the General Plan Update passed many years ago, and can no longer be realistically achieved. Most importantly, the current concept undermines the very benefits that are crucial to the success of the Update. Our objections follow:

1. No public benefit would be gained.

Contrary to the objectives section of the draft ordinance, no benefit to open space, agricultural or habitat land, scenic vistas, etc. would occur beyond what the Update would deliver absent the program. There is also no benefit to the PACE program, as no conservation easements would arise from TDR transactions. Conceivably, selling of TDRs would preclude future GPAs or intensification of uses on *sending* sites, but this is highly speculative and of little practical value.

2. The program would complicate a wide array of property transactions.

Any appraisal of land, or any purchase of property for any purpose, would have to grapple with the nebulous and undefined value of the credits assigned to downplanned land.

3. **The program would undermine the planning certainty that is an *essential* feature of the Update, and instead foster piecemeal future GPAs.**

The General Plan Update is meant to designate land for development over a long planning horizon, including carefully sited new urban nodes, town-centered development, rural preservation, etc. The housing inventory provided is ample for all population projections. And very importantly, as a corollary to meeting housing needs up front, the draft Goals and Policies explicitly *avert* piecemeal future GPAs in order to maintain planning integrity:

GOAL LU-1

Primacy of the Land Use Element. A land use plan and development that sustain the intent and integrity of the Community Development Model and the boundaries between Regional Categories.

Policy LU-1.2

Regional Categories Map Amendments. Avoid General Plan and Specific Plan amendments requiring a change to the Regional Categories Map unless part of a comprehensive General Plan Update.

In contrast, the TDR proposal overtly creates incentives to redesignate and rezone:

(3) The County should also pursue general plan amendments that establish receiving area where future subdivisions and development have the ability to take advantage of transferable development rights.

Thus, the draft TDR proposal is *inconsistent* with GPU Goals and Policies because it would create a huge incentive to bust open the new General Plan. Landowners wishing to sell credits would team up with developers to create enormous political momentum for future GPAs, to the detriment of the public interest sustaining the integrity of the Regional Categories and Community Development Model. *This is wholly unacceptable.*

EHL continues to support an equity mechanism focused on preserving and financially supporting productive agricultural land, implemented through an adequately funded PACE program. We have offered specific suggestions along these lines previously. Thank you for considering our views.

With best regards,

Dan Silver
Executive Director

Date: May 7, 2010

Subject: Comments to the San Diego Planning Commission on the Equity Mechanisms, Pace Program, PDR's and TDR's.

From: Larry Johnson, Chair, Rural Economic Action League (REAL) from the Mountain Empire region of the East County.

Good Morning Chairman Beck and the Board,

I have a few key comments to make,

1. These are additional comments to those I made on April 16, 2010.
2. We support a simple Equity Mechanism.
3. We favor a PACE Program, with PDR capability, and tailored to San Diego County.
4. The PACE Program with PDR's and a TDR Program should have **stringent** qualification conditions for compensation based on a "point system" such as detailed in the San Diego County Farming Program Plan.
5. The PDR or TDR Program's should **not** have a **mandatory** transfer of "Water or Mineral Rights" in the agreement, it should be **optional** and the compensation adjusted accordingly. Loss of "water rights" in the East County will make an agreement unworkable in many cases.
6. The PDR/TDR Program should have identified and secured sources of funding.
7. We believe that any "Sending Sites" East of the County Water Authority (CWA) line should be offered to the whole County in an open process where there is a larger market and not just limited to the area East of the CWA.
8. We believe that "Receiving Sites" East of the CWA should be tightly controlled per the new GPU and the various Community Plans.

Thank you.

VALLE DE ORO COMMUNITY PLANNING GROUP
P. O. BOX 936
LA MESA, CA 91944-0936

May 5, 2010

Mr. Devon Muto
County of San Diego
Dept. of Planning & Land Use
5201 Ruffin Rd., Suite B
San Diego, CA 92123-1666

SUBJECT: Equity Mechanisms

Since we will not be able to attend your May 7th workshop, we request that you consider the following as though it would be presented at the workshop.

To be fair to our unincorporated communities, "Equity" has to be considered for both types of General Plan changes – decreases and increases in General Plan densities. As discussed in your Fact Sheet on the subject, achieving actual equity becomes extremely complex – thus the statistic that only 10% of the programs have been considered successful.

The DPLU recommended concept appears to be a well-reasoned approach to the subject which will protect our communities from surprise density increases on receiver sites that could follow from other approaches.

Thank you for the excellent background information in your Fact Sheet and for keeping us abreast of this topic.

Sincerely,



Jack L. Phillips
Chairman, VDOCPG
619-670-0986

Lardy, Eric

From: Dan Silver [dsilverla@me.com]
Sent: Wednesday, May 05, 2010 3:48 PM
To: Muto, Devon
Cc: Murphy, Jeff ; Gibson, Eric; Wallar, Chandra ; Lardy, Eric; Wong, Jimmy
Subject: TDR program

May 5, 2010

Devon Muto
 DPLU
 5201 Ruffin Rd, Suite B
 San Diego CA 92123

RE: TDR workshop, May 7, 2010

Dear Devon:

In lieu of attending the May 7 workshop, I would like to convey our thoughts on this subject. As an overview, EHL supports an "equity mechanism" of some kind as part of the constructive framework that emerged from the Update process, and which resulted in excellent planning principles and maps. *Consistent with this framework, the mechanism should be primarily geared to ongoing commercial agricultural operations rather than to vacant lands in general.* Furthermore, we do not believe a TDR program is a *necessary* ingredient in accomplishing equity mechanism goals. Rather, the combination of an adequately funded PACE program and an effective Conservation Subdivision program would suffice.

We are skeptical that an effective TDR program can be constructed on short notice without the economic analyses that usually accompany such efforts and which set values for sending and receiving credits. A faulty, poorly functioning TDR program may well be worse than none at all, and our final position on this effort will have to await further details. However, we would strongly oppose a non-mandatory TDR program in which guaranteed down-planning benefits would be lost.

As you consider program options, we recommend a scenario that achieves a net *public* benefit. The public benefit lies in removing *all* development potential from parcels so that habitat and/or agricultural values are permanently conserved. (For farm properties, a residual dwelling unit is generally compatible, of course.) This means being able to market and transfer *post*-General Plan Update densities. We thus recommend an option be developed in which the new General Plan densities can be marketed either alone or in conjunction with the down-planned density. Priority should be given to properties from which all residual development potential is removed. *Further, under any TDR scenario, in order to support agriculture in the County, priority should be given to farm or ranch properties — and particularly to those that contribute to the MSCP and/or the preservation of agricultural land within PAMA.*

Our main input at this time is as follows: As the ultimate fate of the TDR program is unknown, it is *essential* to ensure that the PACE program and Conservation Subdivision end up in good condition and thus backstop the equity mechanism. In regard to the former, we must identify tangible revenue streams. We thus urge that:

5/7/2010

- 1) some fraction of General Fund MSCP monies be directed to PACE acquisitions within North County PAMA,
- 2) that a mitigation fee be established for loss of agricultural land, with fee revenues going to the PACE program, and
- 3) that other revenue streams be explored, such as benefit assessment districts, Mello-Roos, real estate transfer tax, etc.

Regarding the agricultural mitigation fee, a program to compensate for the loss of San Diego County's orchards, ranches, and other agricultural resources is long overdue, and would reflect the emerging trend toward, and consumer in, locally grown produce.

In regard to the Conservation Subdivision program, we are very concerned over the large target minimum lot sizes advanced by the Valley Center Planning Group as an interim step. As Valley Center is a key area for saving farmland and providing equity through Conservation Subdivisions, these targets should be revised along the lines EHL has suggested in its previous comments to the Planning Commission.

We look forward to continuing to work with you on the Update.

With best regards,
Dan

Dan Silver, Executive Director
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